

DDA 78-1231/1

23 March 1978

MEMORANDUM FOR: Legislative Counsel

STAT ATTENTION : [REDACTED]
Assistant Legislative Counsel

STAT FROM : [REDACTED]
Assistant for Information, DDA

SUBJECT : Intelligence Charter Legislation - Title I

REFERENCE : Multiple addressee memorandum from [REDACTED]
Jr., dtd 17 March 1978, Subject: S. 2525 -
Proposed Intelligence Charter Legislation - Title I
Issues Paper (OLC 78-0399/33)

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1. We have reviewed the issues paper forwarded as an attachment to reference and find that we are in general agreement with the positions taken. We do have a few comments, some on sections of Title I which have not been covered in the issues paper and a few on items already discussed in the OLC analysis.

2. In Section 104(12) (p. 12), the term "department or agency" is defined to include any "wholly owned corporation" of the U.S. Government. We question whether this definition may be perceived to be in conflict with the definition of the term "proprietary" which appears in Title IV, Section 403(b) (p. 179). It may be that our purposes are best served by having proprietary corporations covered by the Title I definition but there may be times when such inclusion would be inappropriate. We defer to OGC on the question.

3. We understand that the definition of "intelligence method" in Section 104(17) (p. 14) is to be modified so as to cover "intelligence activities" including "special activities." Is it possible that we also need to expand this definition to include those unique support activities upon which CIA relies to carry out its foreign intelligence mission?

4. In Section 104(24)(C) (p. 18) reference is made to the "consolidated cryptologic program." Although not an uncommon term in budgetary and senior management circles, the so-called "CCP" is not widely known to the rank and file of CIA. Perhaps it should be defined.

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5. In Section 104(30) (p. 20) we support the addition of a reference to "foreign power or organization" to the paragraph on U.S. media organizations. We wondered, however, if we should take this a step further and refer as well to "control or direction by private citizens of a foreign country." This same comment applies to Section 104(31)(D) (p. 21).

6. Section 113(e) (p. 25) requires that the Director and Deputy Director be compensated from "funds appropriated to the Office of the Director" while Section 113(f) authorizes a commissioned officer serving as Director or Deputy Director to receive the difference between his regular military compensation and compensation due him as Director or Deputy Director. Is the difference payable to come from Office of the DNI funds?

7. Section 113(h) (p. 26) line 25, refers to compensation at "rates provided by subsection (e)," but subsection (e) contains no rates.

8. In Section 114(m)&(n) (p. 32), as in Section 421(j) in Title IV (p. 191), the terms "separate" and "terminate" are used. We commented on the confusion that could arise from the use of these two terms in paragraph 20 of our memorandum of 11 March covering Title IV.

9. Section 114(o) (p. 33) provides for reemployment of terminated employees. To repeat a point previously made, an employee terminated for security reasons should not be reemployed in a position which involves access to classified intelligence information. We should not give the Chairman of the Civil Service Commission authority to effectively negate a decision by the DNI to deny an individual access to information about intelligence sources and methods. (The same point applies to Section 421(j)(4) (p. 192) of Title IV.)

10. In Section 116(a) (p. 35) provision should be made for compensating Assistant Directors of national intelligence who may be commissioned officers for differences between the military and Agency entitlements.

11. In Section 121(a) (p. 38), OLC proposes the addition of a new subparagraph (5) on reprogramming. We concur in the subparagraph with one exception; we believe that the Director's reporting responsibility should be more limited, not covering "all" reprogramming. A dollar threshold should be established so as to obviate a need for reporting minor reprogramming involving only a few thousands of dollars. (See OLC Issue No. 38.)

12. On Section 122(a) (p. 40), we would like to emphasize, as we did in speaking about Section 425(a) on page 196 of Title IV, that it is cost effective to conduct CIA activities under a single annual

appropriation. We realize that the authorizing language in Section 122(a) will not preclude a single-year appropriation.

13. In Section 122(b) (p. 40) the DNI's certification authority is not limited to any particular appropriation, leading to the possible interpretation that his certification authority extends to funds appropriated to any entity of the intelligence community. Is this the intent?

14. In Section 135(a)(8) (p. 62) the term "human rights" appears. In your Issue No. 70, you assert that "there is no commonly utilized or acceptable concept of what are 'human rights.'" We suggest that given the administration's heavy emphasis on this subject in its public pronouncements on foreign policy, it might be preferable to drop this item from our statement of issues or, at most, to limit ourselves to a request for a definition of the term.

15. Section 151(e)(1) (p. 78) calls for a quarterly report to the Oversight Board by the Inspector General and General Counsel of each entity of the intelligence community. Elsewhere in the issues paper, efforts have been made to limit reporting to semi-annual or annual reports or to reports rendered "in a timely manner." We suggest that semi-annual reports to the Oversight Board would be sufficient.

16. Section 152(c) (p. 88), in its last sentence, requires the maintenance of an index of the record of legal authorities and published regulations and instructions in the Office of the Federal Register. This would appear to be a pro forma requirement which would serve little purpose. Such an index would have to be classified (this is reflected in the provision for Director-approved security standards for storage) and would probably, therefore, only be available to the oversight committees and the Oversight Board. These organizations, when in need of such information, would turn not to the Office of the Federal Register but to CIA and the other entities of the intelligence community. The maintenance of such an index would be both burdensome and useless. This position is at odds with the one proposed in paragraph 27 of your "Technical Suggestions" for Title I.

17. Section 152(d) (p. 88) should be recast to incorporate the language which appears in the Federal Records Act, specifically Title 44 U.S.C. 3101, where Federal agencies are required to make and preserve records containing "adequate and proper documentation." The following language is recommended:

(d) The Director shall make and preserve records containing adequate and proper documentation regarding the national intelligence activities of the United States consistent with guidelines established by the Administrator of General Services; and the head of each entity of the intelligence community shall make and preserve records containing adequate and proper documentation, consistent with GSA guidelines, regarding the intelligence activities of such entity.

18. Section 152(f) (p. 89) would have every entity of the intelligence community provide the oversight committees with "all rules, regulations, procedures, and directives issued to implement the provisions of this Act." The flood of paper which would be generated by this requirement boggles the mind. Clearly, every regulation and directive issued by this agency would qualify under the phrasing of Section 152(f). We strongly recommend that this requirement be deleted from the charter legislation. Similarly, we would propose the deletion of the requirement that every waiver of an Agency regulation or directive be reported. Such a requirement could burden the committees with a great deal of unnecessary detail.

19. The rest of the comments made in the Title I issues paper have our concurrence. Both that paper and the one on Title II were very well done, by the way, and those who participated in their preparation should be congratulated for the excellence of their staff work on these complex issues.

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